

Atty. Docket No. 610.0002,
Amdt. Dated March 1, 2010
Appl. No. 10/830,144

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REMARKS

In this response, no claims are cancelled and claims 26-30 are added.

Accordingly, claims 5, 7-13, 15, 17, 21 and 23-30 are pending.

Claims 5, 21 and 23-25 were rejected under 35 U.S.C. § 102(b) as anticipated by Brothers, U.S. Patent No. 2,387,428 (hereinafter Brothers). This rejection is respectfully traversed.

A rejection for anticipation under 35 U.S.C. §102 requires that each and every limitation of the claimed invention be disclosed in a single prior art references. *In re Paulsen*, 30 F.3d 1475, 1478-1479 (Fed Cir. 1994). Here, the Office Action has erred by finding that Brothers includes all claim limitations.

CLAIM 5

With respect to claim 5, the Office Action erred in finding that Brothers discloses a substantially rigid base. The Office Action labeled element 10 as the substantially rigid base relying on the explanation provided at Col. 2, lines 10-11, and labeled element 18 as a strap. This analysis is faulty for several reasons.

First, element 10 is not a base at all; it is a leather strap. See Colum 1, line 2. More importantly, strap 10 is flexible (Col. 2, line 20) such that its ends slide freely relative to one another, i.e., bind. (Col. 2 lines 13-14).

The Office Action provides no interpretation of the term “substantially rigid”. However, it is unreasonable to find that the flexible leather strap 10 reads on the “substantially rigid base” claim limitation. Specifically, it is not a reasonable claim

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interpretation to equate “flexible” with “substantially rigid”. See *In re Buszard*, 504 F.3d 1364, 1367; 84 USPQ2d 1749 (Fed. Cir. 2007). Rigid and flexible are antonyms.

Brothers teaches that strap 10 provides a constricting element. Col. 2, lines 6-7. However, if strap 10 were a substantially rigid element as asserted by the Office Action, it would be rendered an ineffective constricting element and thus destroy the function and purpose of Brothers.

Second, element 18 of Brothers is a cord, not a strap. Brother itself identifies element 18 as a cord and, in contrast, identifies element 10 as a strap. Brothers makes a definite distinction between cord 18 and strap 10. Cord 18 is used to constrict strap 10 about the limb. Strap 10 is only used to protect the limb from damage which would occur from using the cord alone. Col. 2, lines 6-10.

In the device defined by claim 5, there is a specific relationship between the strap and the handle which reduces binding of the base when the handle is twisted.

Conversely, **Brothers increases constriction of strap 10 as its handle is twisted.** It is believed that if cord 18 were a strap then strap 10 would be more likely to pinch and crimp the skin of the limb when cord 18 were tightened.

In view of the foregoing, it is readily apparent that Brothers does not anticipate claim 5.

CLAIM 21

Claim 21 depends from claim 5 is asserted to be properly allowable for the same reasons as articulated above with respect to claim 5. In addition, claim 21 is submitted

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to be properly allowable because Brothers does not disclose a tourniquet including a buckle as recited in claim 21.

The Office Action alleges that element 20 of Brothers is a buckle. There is no support in the record for this finding. Brothers identifies element 20 as a guide. The Office Action does not identify any evidence supporting the finding that guide 20 meets the “buckle” limitation of claim 21. In fact, the only reasonable interpretation of claim 21 requires a finding that guide 20 does not meet the buckle limitation.

FreeDictionary.com defines the term “buckle” as follows:

“a clasp fastening two ends, as of straps or a belt, in which a device attached to one of the ends is fitted or coupled to the other.”

See Exhibit 1. Guide 20 is not a clasp and it does not fasten ends of a strap.

Accordingly, claim 21 is not anticipated by Brothers and claim 21 is properly allowable.

CLAIMS 23- 25

Claims 23 - 25 include the “substantially rigid base” limitation of claim 5 and are therefore allowable for the same reasons as claim 5.

The Office Action rejected claims 23-25 under 35 U.S.C. §102(e) as anticipated by McMillan, U.S. Patent No. 6,899,720 (hereinafter McMillan). This rejection is respectfully traversed as McMillan does not disclose a substantially rigid base as recited in claims 23-25.

The issue of McMillan’s teachings regarding the “substantially rigid base” limitation of the claims has been addressed by Applicants on several occasions in this prosecution. Applicants are perplexed as to how this issue continues to arise after

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traverse and after the Patent Offices' admission that McMillan is silent regarding this limitation. See ¶2 of the Office Action dated July 24, 2008.

For the purposes of this rejection, the Office Action has identified element 16 as a substantially rigid base. Designation of element 16 of McMillan as the substantially rigid base of claim 23 constitutes factual error. McMillan itself refers to element 16 as a "typical off-the-shelf buckle." McMillan explains that one end of strap 12 is looped through the rung of buckle 16 and is then doubled back against the body of the strap. An opposing end of the strap 12 passes through the cam portion of buckle 16. See Col. 3, lines 45-51. Common sense dictates that buckle 16 is not a base. Also, see Exhibit 1. Furthermore, there is no evidence in the record to support the finding that buckle 16 is a base as understood by persons of skill in the tourniquet art.¹ Accordingly, claims 23-25 are not anticipated by McMillan. It follows that claims 23-25 are properly allowable.

The Office Action rejected claims 7-13 under 35 U.S.C. §103 as unpatentable over Brothers. This rejection is respectfully traversed.

The Office Action has failed to establish a *prima facie* case of obviousness with respect to claims 7 and 8. As discussed above in connection with the discussion of the rejection of claim 5, Brothers fails to disclose several limitations including the "substantially rigid base" limitation and the "strap" limitation. This rejection fails to

¹ The only evidence of record showing what the term base means to a person of skill in the art is U.S. Patent Publication No. 2005/0273134 referenced on page 8 of the September 19, 2007 amendment. **None of the subsequent Office Actions have addressed this evidence.** It remains the only evidence of record regarding the interpretation of the "substantially rigid base" claim language.

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reconcile the differences between claims 7 and 8 and Brothers. Accordingly, Brothers does not render the subject matter of claims 7 and 8 obvious. It follows that claims 7 and 8 are properly allowable.

The Office Action has likewise failed to establish a *prima facie* case of obviousness with respect to claims 9-13. The Office Action asserts that Brothers discloses the invention substantially as claimed but fails to disclose the structure of the substantially rigid base as recited in claims 9-13. This finding is incorrect as Brothers fails to disclose several limitations including the “substantially rigid base” limitation and the “strap” limitation. This rejection fails to reconcile the differences between claims 9-13 and Brothers. Accordingly, the rejection is improper.

Notwithstanding the foregoing shortcomings of Brothers, claims 9-13 recite a different structure than that disclosed in Brothers. The Office Action found that it would have been obvious to construct strap 10 of Brothers of a layered composite including a lower layer comprised of one of a non-skid fabric, a non-slip fabric and a looped end Velcro as a matter of design choice. This finding is contrary to the teachings of Brothers in that Brothers teaches that strap 10 is constricted upon the limb and that the strap ends slide freely relative to one another. However if strap 10 were to be comprised of a non-skid, non-slip fabric, such would actually increase friction between the limb and strap 10 thus inhibiting free sliding. See paragraph [0016] of the instant application. Such a modification of Brothers would render Brothers ineffective for its intended purpose.

Accordingly, the skilled artisan would not have been motivated to modify Brothers and claims 9-13 would not have been obvious in view of Brothers. It follows that claims 9-13 are properly allowable.

Claims 15 and 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Brothers in view of McMillan. This rejection is respectfully traversed.

The Office Action has not articulated reasoning with rational underpinning to support the legal conclusion of the obviousness of modifying Brothers according to McMillan as proposed in this rejection. The Office Action asserts that the skilled artisan would have been motivated to modify Brothers to include the handle lock of McMillan in order to secure the strap to the base. However, Brothers uses guides 20 to secure cord 18 to strap 10. See Col. 1, lines 23-25. Absent impermissible hindsight reconstruction, there is no reason to add an additional structural element to secure cord 18 to strap 10.

Even if the skilled artisan were motivated to modify Brothers as proposed, the modification still does not meet the limitations of claim 15. As discussed above, neither Brothers nor McMillan disclose a substantially rigid base as claimed. In this rejection, the Office Action does not identify the element of McMillan alleged to correspond to the substantially rigid base. However, in the earlier rejection of claims 23-25 (page 3 of the Office Action), the Office Action identifies buckle 16 of McMillan as the substantially rigid base. That finding was traversed above. Brothers does not disclose a substantially rigid base either.

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Even if buckle 16 was considered a substantially rigid base, and it is not, contrary to the statements in the Office Action and the requirements of claim 15, ring 24,28 *is not* attached to buckle 16.

Accordingly, the subject matter of claim 15 would not have been obvious in view of the proposed Brothers/McMillan combination. It follows that claim 15 is properly allowable. Dependent claim 17 is likewise properly allowable.

Claim 26-30 are added. Support for claim 26 can be found at paragraph [0020]. Support for claim 27 can be found at paragraph [0016]. Support for claim 28 can be found at paragraph [0022]. Support for claims 29 and 30 can be found at paragraph [0018]. Each of claims 26-30 is submitted to be allowable over the art of record because each claim includes one or more limitations not taught or disclosed by the art of record.

In view of the foregoing amendments and remarks, it is asserted that the application is in condition for allowance. Reconsideration of the rejection and a favorable action on the merits are respectfully requested.

Respectfully submitted,
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